Fairise Odyssey (M) Sdn Bhd v Tenaga Nasional Bhd

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 02(f)-37–06 OF 2016(W)

TENGKU MAIMUN CHIEF JUSTICE, AHMAD MAAROP PCA, AZAHAR MOHAMED, BALIA YUSOF AND ROHANA YUSUF FCJJ

19 JULY 2019

Statutory Interpretation — Construction of statutes — Intention of Parliament — Section 12 of the Electricity Supply Act 1990 ('the ESA') — Whether state authority's approval to Tenaga Nasional Bhd ('TNB') to erect power transmission lines on state land must be in writing or could be implied — Whether s 12 of the ESA did not state approval must be in writing unlike several other provisions in ESA requiring certain acts to be done in writing — Whether omission of written approval in s 12 of the ESA deliberately intended by Parliament — Whether facts and circumstances of case showed state authority impliedly approved erection of transmission lines — Whether state authority approved land to TNB to construct substation and was aware transmission lines were being built to connect to substation and did not object to same — Whether subsequent owner of land on which transmission lines were erected could not sue TNB for trespass

The sole issue in the instant case was whether the respondent ('TNB') had obtained the approval of the State Authority of Negeri Sembilan to construct power transmission lines on a piece of land which came to be owned by the appellant. On discovering the transmission lines — the existence of which was not reflected on the land's qualified title — the appellant sued TNB in the High Court for, inter alia, a declaration that TNB had unlawfully erected the structures and was thereby liable to pay the appellant damages for continuing trespass. Construction of the transmission lines began in 1992 when the land was still state land and after the state authority had allowed TNB to build a substation on a portion of the land for which a separate title was issued in TNB's name. Construction of the lines was completed in 1994, shortly after the land was alienated to another company. The appellant only became owner of the land in 2010. Section 12 of the Electricity Supply Act 1990 ('the ESA 1990') required TNB to obtain the approval of the state authority to erect transmission lines on state land. The appellant argued that such approval must be express and in writing because the state authority (which, in this case, was the State Executive Council or 'State Exco') could only act by resolution and properly convened meetings and consideration of papers for approval. The appellant said there was no room for implied approval otherwise anyone could assert licence to occupy state land by way of implied approval or approval by conduct. The appellant contended that without a formal written approval, TNB had no approval from the state authority to erect the transmission lines.

TNB rebutted by saying that by alienating a portion of the land to TNB for the construction of a substation, and by having knowledge that transmission lines were being constructed to connect the substation to the electricity grid that supplied power to residents living in the area from Gemas to Kuala Pilah in Negeri Sembilan, and by not objecting to such construction, the state authority had impliedly given its approval to the erection of the lines. TNB argued that s 12 of the ESA 1990 did not specifically require the approval to be in writing. The High Court agreed with TNB's submissions and dismissed the appellant's claim. The decision was upheld by the Court of Appeal ('COA'). The instant appeal was against the COA's decision.

Held, dismissing the appeal:

(1) On the facts and circumstances of the case, TNB had proven that they had the approval of the state authority to construct the transmission lines on the land. As such, the cause of action for continuing trespass could not lie against TNB. The appellant's claim was rightly dismissed by the High Court and the decision was rightly upheld by the Court of Appeal (see para 71).

(2) There was no reason to differ from the interpretation placed by the courts below on the word 'approval' in s 12 of the ESA. Even if the phrase 'approval of the State Authority' was read in conjunction with art XLIV(1) of the Negeri Sembilan State Constitution, which required that 'minutes shall be kept of all the proceedings of the State Executive Council', the approval for TNB to build a substation was reflected in the minutes dated 14 August 1991. The minutes showed that the state authority had approved alienation of land to TNB to construct a substation and an individual title was issued for the land concerned. The appellant could not deny the fact that the substation served no purpose without the transmission lines. The approval of the substation was thus approval for the transmission lines. The state authority had knowledge of the construction of the transmission lines on the land by TNB and it had not objected to the same (see paras 62, 68 & 70).

(3) The words used in s 12 of the ESA were clear, ie, there had to be an approval by the state authority for TNB to construct the transmission lines on state land. The words 'approval in writing' was absent. Applying the first and most elementary rule of construction, it had to be assumed that words and phrases were used in their ordinary meaning. Parliament had deemed it fit not to provide for the words 'approval in writing'. Parliament's intention was made clearer if s 12 was contrasted with other provisions in the 1990 Act, namely, ss 11(4), 14(2)(a) and 37(13)(a) which specifically stipulated for certain acts to be done in writing (see para 57).

(4) The court's duty was limited to interpreting the words used in the legislation. It was not for the court to rewrite the statute by adding the words 'in writing' to the phrase 'approval of the State Authority' in s 12 of the ESA. Giving the word 'approval' its plain and ordinary meaning, the approval envisaged in s 12 could be in the form of an implied approval or an express approval — implied as could be gathered from the facts and circumstances, or express, as in writing. The appellant's concern that it was dangerous, as a matter of public policy, for the state authority to give implied approval or approval by conduct, did not arise as the court was required to consider the issue of approval in each case based on its own facts and evidence (see paras 58–59).

[Bahasa Malaysia summary

Isu tunggal dalam kes ini adalah sama ada responden ('TNB') telah memperoleh kelulusan Pihak Berkuasa Negeri Negeri Sembilan untuk membina talian kuasa transmisi di sebidang tanah yang dimiliki oleh perayu. Apabila menemui talian transmisi — yang mana kewujudannya tidak dapat dilihat pada hak milik berkelayakan tanah — perayu menyaman TNB di Mahkamah Tinggi untuk, antara lain, satu deklarasi bahawa TNB mendirikan bangunan secara tidak sah dan dengan itu bertanggungjawab membayar ganti rugi perayu kerana pencerobohan berterusan. Pembinaan talian transmisi bermula pada tahun 1992 apabila tanah itu masih tanah negeri dan selepas pihak berkuasa negeri telah membenarkan TNB membina pencawang di sebahagian tanah yang mana hak milik berasingan dikeluarkan dalam nama TNB. Pembinaan talian itu selesai pada tahun 1994, sejurus selepas tanah itu dipindahkan kepada syarikat lain. Perayu hanya menjadi pemilik tanah pada tahun 2010. Seksyen 12 Akta Bekalan Elektrik 1990 ('Akta') memerlukan TNB untuk mendapatkan kelulusan pihak berkuasa negeri untuk mendirikan talian transmisi di tanah negeri. Perayu berpendapat bahawa kelulusan sedemikian mestilah nyata dan bertulis kerana pihak berkuasa negeri (yang, dalam kes ini, adalah Majlis Eksekutif Negeri atau 'Exco Negeri') hanya boleh bertindak melalui resolusi dan mengadakan mesyuarat dan pertimbangan kertas kerja dengan betul untuk diluluskan. Perayu mengatakan tidak ada ruang untuk kelulusan tersirat jika tidak seseorang boleh membuktikan lesen untuk menduduki tanah negeri dengan kelulusan tersirat atau kelulusan oleh kelakuan. Perayu berpendapat bahawa tanpa kelulusan bertulis rasmi, TNB tidak mempunyai kelulusan dari pihak berkuasa negeri untuk mendirikan talian transmisi. TNB membalas dengan mengatakan bahawa dengan memindahkan sebahagian tanah kepada TNB untuk pembinaan sebuah pencawang, dan dengan mengetahui bahawa talian transmisi sedang dibina untuk menghubungkan pencawang ke grid elektrik yang membekalkan kuasa kepada penduduk yang tinggal di kawasan itu dari Gemas ke Kuala Pilah di Negeri Sembilan, dan dengan tidak membantah pembinaan itu, pihak berkuasa negeri telah secara tersirat memberikan kelulusannya untuk mendirikan talian. TNB berhujah bahawa s 12 Akta tidak secara khusus

memerlukan kelulusan untuk bertulis. Mahkamah Tinggi bersetuju dengan hujahan TNB dan menolak tuntutan perayu. Keputusan itu dikekalkan oleh Mahkamah Rayuan ('MR'). Rayuan ini adalah terhadap keputusan MR.

Diputuskan, menolak rayuan:

(1) Melalui fakta dan keadaan kes tersebut, TNB telah membuktikan bahawa mereka mempunyai kelulusan pihak berkuasa negeri untuk membina talian transmisi di tanah tersebut. Oleh itu, kausa tindakan untuk pencerobohan berterusan tidak boleh diletakkan terhadap TNB. Tuntutan perayu telah ditolak oleh Mahkamah Tinggi dan keputusan itu dikekalkan oleh MR (lihat perenggan 71).

(2) Tidak ada alasan untuk membelakangkan daripada tafsiran yang diletakkan oleh mahkamah bawahan atas perkataan 'kelulusan' dalam s 12 Akta. Sekalipun ungkapan 'kelulusan Pihak Berkuasa Negeri' dibaca bersama perkara XLIV(1) Perlembagaan Negeri Sembilan, yang menghendaki supaya 'minit akan menyimpan semua prosiding Majlis Eksekutif Negeri', kelulusan TNB untuk membina sebuah pencawang dicerminkan pada minit bertarikh 14 Ogos 1991. Minit menunjukkan bahawa pihak berkuasa negeri telah meluluskan pemindahan tanah kepada TNB untuk membina sebuah pencawang dan hak milik individu dikeluarkan untuk tanah yang berkenaan. Perayu tidak dapat menafikan hakikat bahawa pencawang itu tidak berguna tanpa talian transmisi. Oleh itu kelulusan pencawang itu adalah kelulusan untuk talian transmisi. Pihak berkuasa negeri mempunyai pengetahuan tentang pembinaan talian transmisi di atas tanah oleh TNB dan tidak membantah terhadapnya (lihat perenggan 62, 68 & 70).

(3) Kata-kata yang digunakan dalam s 12 Akta adalah jelas, iaitu, perlu ada kelulusan oleh pihak berkuasa negeri untuk TNB untuk membina talian transmisi di tanah negeri. Tiadak terdapat perkataan 'kelulusan secara bertulis'. Menggunakan peraturan interpretasi pertama dan paling asas, ia harus diandaikan bahawa kata-kata dan frasa digunakan dalam makna biasa mereka. Parlimen menganggapnya sesuai untuk tidak memberikan perkataan 'kelulusan secara bertulis'. Hasrat Parlimen dijelaskan dengan jelas jika s 12 adalah berbeza dengan peruntukan lain dalam Akta, iaitu ss 11(4), 14(2)(a) dan 37(13)(a) yang khusus ditetapkan untuk tindakan tertentu yang akan dilakukan secara bertulis (lihat perenggan 57).

(4) Tugas mahkamah adalah terhad untuk menafsirkan kata-kata yang digunakan dalam undang-undang. Bukan untuk mahkamah menulis semula statut dengan menambah perkataan 'secara bertulis' kepada frasa 'kelulusan Pihak Berkuasa Negeri' dalam s 12 Akta. Memberi perkataan 'kelulusan' dalam makna nyata dan biasa, kelulusan yang dijangkakan dalam s 12 boleh berupa kelulusan tersirat atau kelulusan nyata — tersirat seperti yang dapat dikumpulkan daripada fakta dan keadaan, atau

nyata, secara bertulis. Kebimbangan perayu bahawa ia berbahaya, sebagai perkara dasar awam, bagi pihak berkuasa negeri untuk memberikan kelulusan tersirat atau kelulusan oleh kelakuan, tidak timbul kerana mahkamah dikehendaki mempertimbangkan isu kelulusan dalam setiap kes berdasarkan faktanya sendiri dan keterangan (lihat perenggan 58–59).]

Notes

For cases on intention of Parliament, see 11(2) *Mallal's Digest* (5th Ed, 2018 Reissue) paras 1965–1967.

Cases referred to

Affin Credit (Malaysia) Sdn Bhd v Yap Yuen Fui [1984] 1 MLJ 169, FC (refd)

Datuk Seri Ahmad Said Hamdan, Ketua Suruhanjaya, Suruhanjaya Pencegah Rasuah Malaysia & Ors v Tan Boon Wah [2010] 3 MLJ 193, CA (refd)

Fletcher and Others v Minister of Town and Country Planning [1947] 2 All ER 496, KBD (refd)

Magor and St Mellons Rural District Council v Newport Corporation [1951] 2 All ER 839; [1952] AC 189, HL (refd)

Multi-Purpose Bank Bhd v Diamond Agreement Sdn Bhd [2000] 5 MLJ 576, HC (refd)

New Plymouth Borough Council v Taranaki Electric Power Board [1933] AC 680, PC (refd)

Tenaga Nasional Bhd v Majlis Daerah Hulu Terengganu [2014] 6 MLJ 800, FC (distd)

Tenaga Nasional Bhd v Ong See Teong & Anor (suing on their behalf and for all parties who are the owners or tenants of the Kampung Sungai Terentang — which was served with a notice under ss 13 and 16 of the Electricity Supply Act 1990) [2010] 2 MLJ 155, FC (refd)

Legislation referred to

Courts of Judicature Act 1964 s 78(1)
Electricity Act 1949 (repealed by the Electricity Supply Act 1990) ss 52, 53
Electricity Supply (Successor Company) Act 1990
Electricity Supply Act 1990 ss 11(4), 12, 14(2)(a), 37(13)(a)
Interpretation Acts 1948 and 1967 s 3, Part 1
Local Government Act 1976 s 137(3),
Malaysian Anti-Corruption Commission Act 2009 s 30(1)(a), (3)
Municipal Corporation Act 1920 [NZ] s 282
Negeri Sembilan State Constitution arts XXXV, XLIV(1)
New Towns Act 1946 [UK]

Appeal from: Civil Appeal No W-02(NCVC)(W)-1267–07 of 2014 (Court of Appeal, Putrajaya)

Gopal Sri Ram (Ben Chan, Emily Wong, Chin Yu Yen and Yasmeen Soh with him) (Shyong Wee & Danny) for the appellant.
Steven Thiru (Alvin John, David Mathew and Wong Jing-En with him) (Alvin John & Partners) for the respondent.

Tengku Maimun Chief Justice (delivering judgment of the court):

INTRODUCTION

[1] This is an appeal by the appellant against the decision of the Court of Appeal which affirmed the decision of the High Court, in dismissing the appellant's claim for continuing trespass.

BACKGROUND FACTS

[2] The dispute in this appeal concerns a parcel of land described as HS(D) No 10045, PT No 3980, Mukim Gemas, District of Tampin, Negeri Sembilan measuring 144.272 hectares ('the land'), on which the respondent had built transmission lines.

[3] The land which was originally state land was first alienated to Metro Angkasa Sdn Bhd ('Metro Angkasa') in 1990. Due to Metro Angkasa's failure to pay the premium, the alienation was cancelled in 1992.

[4] Prior to 1990, the supply of electricity and matters connected to it were carried out by a department known as Lembaga Letrik Negara ('LLN'). On 12 July 1990, the respondent was incorporated as a public company limited by shares. Pursuant to the Electricity Supply (Successor Company) Act 1990 which came into effect on 1 September 1990, all properties, rights and liabilities of LLN were vested in the respondent.

[5] In 1992, the respondent engaged HG Power Transmission Sdn Bhd to construct the transmission lines on the land. The transmission lines were connected to the TNB's substation and formed part of the electricity grid that supplies power to residents living in the area from Gemas to Kuala Pilah, Negeri Sembilan. The substation was built on a strip of land which was carved out and given to the respondent for the construction of the substation, and which was originally part of the subject land in dispute. A separate individual title was issued and registered in the respondent's name on 25 August 1992 for this strip of land described as HS(M) 1561, PT No 3926, Mukim Gemas, State of Negeri Sembilan, measuring 2.2356 hectares.

[6] In the meantime, Metro Angkasa had appealed against the cancellation

of the alienation. The appeal was successful and the land was realienated to Metro Angkasa in 1993.

[7] Sometime in November 1994, HG Power completed the works for the transmission lines. The transmission lines occupied about 5.4643 hectares of the land ('the affected area').

[8] Sometime in March 1994, Metro Angkasa charged the land to Southern Bank Bhd ('Southern Bank') as security for banking facilities granted by Southern Bank. By a vesting order dated 6 September 2006, all assets and liabilities of Southern Bank were vested in CIMB Bank Bhd ('CIMB').

[9] Metro Angkasa defaulted in repayment of the loan. The land was foreclosed and by a sale and purchase agreement dated 11 January 2010, CIMB sold the land on a 'as it where is' basis to Elitprop Sdn Bhd ('Elitprop'). At the request of Elitprop and by an agreement dated 1 November 2010, the land was transferred by CIMB directly to the appellant. The appellant is Elitprop's nominee.

[10] After the appellant became the registered proprietor of the land, on 30 December 2010, the appellant objected to the existence of the transmission lines. On 30 May 2011, the appellant commenced a suit against the respondent alleging continuing trespass. The appellant contended that the transmission lines had been constructed on the land without the approval of the state authority.

[11] The appellant sought for inter alia a declaration that the use and/or possession of the affected area by the respondent for the transmission lines is unlawful and void ab initio and for damages for trespass, to be assessed.

PROCEEDINGS IN THE HIGH COURT

[12] The following issue was framed for determination by the High Court:

> Whether the state authority had given their approval to the defendant to construct, install and lay a 132KV transmission line ('TNB transmission lines') over the plaintiff's land which at the material time was state owned land involving approximately 5.4643 hectares ('the disputed areas') out of the total of 144.272 hectares alienated, and if in the affirmative whether such approval binds all parties who have taken ownership of the subject land including the plaintiff?

[13] The learned judicial commissioner ('JC') considered two sub-issues raised by the appellant ie: (i) that the approval for the respondent to construct the transmission lines must be in writing; and (ii) that the approval must be given by the State Executive Committee.

[14] In the High Court, parties could not agree on whether the Electricity Supply Act 1990 ('the 1990 Act') or its precursor, the Electricity Act 1949 ('the 1949 Act'), was applicable to the case. The learned JC agreed with the appellant that since the erection of the transmission lines commenced in 1992, the applicable law was the 1990 Act.

[15] In considering the issue whether the approval of the state authority must be in writing, the learned JC examined the relevant statutory provisions governing the installation of the transmission lines on state land under the 1949 Act and the 1990 Act which repealed the 1949 Act.

[16] Under the 1949 Act, the relevant provision ie s 53 provides:

> For the purposes of constructing a supply line for any Board Installation, the Chairman or any person authorized by him in that behalf may, at all reasonable times, enter upon any State land and may, subject to the approval of the State Authority, erect in or upon that state land such posts and other apparatus as may be necessary or proper for the purposes of the installation, and may carry out all necessary works in connection therewith, and may, in the course thereof, fell or lop trees, remove vegetation and do all other things necessary to the said purposes:
>
> Provided that —
>
> (a) when any such work interferes with improvements, buildings, growing trees, or crops, the Board shall pay compensation in accordance with section 58 for disturbance or damage; and
>
> (b) where the land is coupled under a licence for temporary occupation, the compensation shall be paid to the occupant under the license, and where the land is occupied under an approved application, such compensation shall be paid to the applicant recorded in the roll of approved applications, by whatever name such roll is called in the State where the land is situate.

[17] Under the 1990 Act, the laying, placing or carrying on of the transmission lines by the respondent on state land is governed by s 12 which reads:

> (1) Subject to the approval of the State Authority and to such conditions as the State Authority may deem proper, a licence may extend to authorizing the licensee to lay, place or carry on, under or over State land, to the extent and in the manner specified in the licence, such supply lines and to erect and maintain in or upon State land such posts and other equipment as may in the opinion of the Commission be necessary or proper for the purposes of the licensed installation, and subject always to the approval of the State Authority, the said authorization may be given or added to at any time during the currency of the licence by endorsement thereon under the seal of the Commission.

A (2) All equipment placed in or upon State land which is not removed therefrom within six months, or such longer period as the State Government may permit, after the expiration or early determination of the licence under the authority whereof the same was so placed, shall vest in and become the property of the Government of the State where the same is situated.

B

[18] The learned JC noted that whether under the 1990 Act or the 1949 Act, the respondent had to obtain the approval of the state authority for the construction of the transmission lines. The answer to the question whether the C approval must be in writing turns on the meaning to be accorded to the word 'approval' in both the provisions.

[19] The respondent took the position that neither s 52 of the 1949 Act nor s 12 of the 1990 Act specifically stated that the approval must be in writing. For D the appellant, it was argued that the court should not countenance the interpretation contended by the respondent as its effect would lead to uncertainty and the law will be in a state of mess.

E **[20]** The learned JC applied the fundamental principle of statutory construction that words in a statute must be given their plain, ordinary and natural meaning unless Parliament cannot have intended this meaning because it gives rise to difficulties which are so serious as to make the statutory provision unworkable or impracticable. Reference was made to *Bennion on Statutory* F *Interpretation* (6th Ed); *Multi-Purpose Bank Bhd v Diamond Agreement Sdn Bhd* [2000] 5 MLJ 576; and *Tenaga Nasional Bhd v Ong See Teong & Anor (suing on their behalf and for all parties who are the owners or tenants of the Kampung Sungai Terentang — which was served with a notice under ss 13 and 16 of the Electricity Supply Act 1990)* [2010] 2 MLJ 155.

G

[21] Applying the above stated principle, the learned JC agreed with the respondent that the argument of the appellant 'fatally requires reading into the provisions words which simply are not there'. The learned JC opined that if H indeed the draftsman had intended to give the word 'approval' a restrictive meaning as contended by the respondent, he could have done so by express provision and that the draftsman could have easily inserted the words 'in writing' to the provision. The learned JC held that in the absence of express words requiring the approval to be in writing, the statutory language must be I read in its plain and ordinary context, and that the words in both provisions in Acts 1949 and 1990 permit both express and implied approval of the state authority. The learned JC further held that this interpretation accords with an important principle that in trespass, consent, whether express or implied, affords a good defence.

[22] The learned JC stated that the respondent would not be in contravention of the law, if it had the approval of the state authority, albeit not in writing, to erect the transmission lines. **A**

[23] The learned JC proceeded to consider the meaning of 'state authority' where parties were at variance whether it refers to the State Executive Committee as advanced by the appellant, or to the Director of Land and Mines, as contended by the respondent. **B**

[24] Having considered inter alia, the definition of the 'State Authority' in s 3 of the Interpretation Acts 1948 and 1967, the learned JC agreed with the appellant that the approval under the 1949 Act or the 1990 Act must be given by the State Executive Committee. **C**

[25] In determining the critical issue whether the respondent had the approval of the state authority to erect the transmission lines, the learned JC alluded to the fact that by the State Executive Committee's minutes of 8 August 1990, it was clearly demonstrated that the state authority was aware of the respondent's plan to erect a transmission line which would run from Kuala Pilah to Gemas. The minutes further show that it was for this specific reason that the state authority had alienated land to the respondent for the construction of a TNB substation on the land. **D** **E**

[26] The learned JC further alluded to the fact that a substation without a transmission line would serve no purpose, as it is the transmission line that connects the electricity system from Kuala Pilah to Gemas, and facilitates the transfer of power to consumers from the power stations and substations. For these reasons, the learned JC found that the state authority not only did not object but had implicitly approved, by their conduct, the construction of the transmission lines on the land. In this regard, the learned JC had also considered the *Kertas Kerja* attached to the minutes of the State Executive Committee dated 8 August 1990 where the relevant parts read: **F** **G**

> Tujuan **H**
>
> Tujuan kertas kerja ini adalah untuk mendapatkan pertimbangan Majlis Mesyuarat Kerajaan Negeri terhadap:-
>
> i. Permohonan dari Syarikat Metro Angkasa Sdn Bhd untuk memiliki dan memajukan tanah kerajaan seluas 400 ekar di Mukim Kuala Gemas, Daerah Kecil Gemas sebagai kawasan perusahaan; **I**
>
> ii. ..
>
> *Latarbelakang*
>
> Kawasan yang dipohon merupakan tanah kerajaan seluas 400 ekar terletak di Mukum Kuala Gemas daerah Kecil Gemas ...

A Kemudahan Infrastruktur

...

Bekalan Elektrik

B Pihak LLN telah merancang untuk membina 2 buah pencawang Masuk Utama (PMU) dikawasan dengan berkeupayaan 2 x 30 MVA. Projek ini akan dibuat melalui projek pemasangan kabel LLN dari Segamat ke Kuala Pilah yang melalui kawasan Gemas. Sebuah tapak pencawang seluas 4 ekar telah diluluskan oleh Pentadbir Tanah Daerah Kecil Gemas bagi keperluan ini, berdasarkan dengan kawasan tanah yang dimohon.

C

[27] The learned JC also considered the oral testimonies of the witnesses where she accepted the evidence for the respondent that the existence of the transmission lines was not endorsed on the register document of title as no
D survey had been done. The land was still held under a qualified title and that the existence of the transmission lines will be endorsed on the final title only after a survey is done. The learned JC held that the absence of any endorsement on the register of title as to the encumbrance relating to the transmission lines did not vitiate the implied consent given to the respondent.

E

[28] On the evidence adduced, the learned JC made a finding that since 1992, when the transmission lines had been on the land, none of the original owners had ever objected to the presence of the transmission lines. Her Ladyship held that where there is a lengthy period during which materials
F remain on the land without objection or without a request for those materials to be removed, the law does not permit a landowner to assert a claim in trespass. In the instant case, the learned JC found no evidence that either the state authority or Metro Angkasa or CIMB had protested about the transmission lines. It was held by the learned JC that a trespass cannot constitute a
G continuing trespass if it never constituted a trespass to begin with. In the result, the learned JC found that the appellant failed to prove continuing trespass as the evidence demonstrates that the respondent had the approval of the state authority. It was further held that the approval binds all parties who have taken
H ownership of the subject land subsequent to the alienation to Metro Angkasa.

[29] Aggrieved by the decision of the High Court, the appellant appealed to the Court of Appeal.

I PROCEEDINGS IN THE COURT OF APPEAL

[30] The appellant canvassed only one issue in the Court of Appeal, namely whether the state authority had given its approval to the respondent, whether under s 52 of the 1949 Act or s 12 of the 1990 Act.

[31] The Court of Appeal agreed with the learned JC's finding that the provisions of the 1990 Act applied to this case as the erection of the transmission lines had commenced in 1992. The focus of the Court of Appeal was thus on s 12 of the 1990 Act. A

[32] Based on the authorities cited by the learned JC, the Court of Appeal agreed with the High Court that s 12 of the 1990 Act did not require the approval of the state authority to be expressly in writing. The Court of Appeal further agreed with the learned JC that s 12 of the 1990 Act permits the express or implied approval of the state authority. B C

[33] On the issue of which person or body of persons represent the 'state authority', the Court of Appeal likewise agreed with the learned JC, except that instead of referring to the 'State Executive Committee', the Court of Appeal highlighted it should have been referred to the 'State Executive Council' as provided for in art XXXV of the Negeri Sembilan State Constitution. D

[34] The Court of Appeal saw no reason to disturb the finding of fact by the learned JC that the state authority had implicitly, vide conduct of the relevant parties, approved the erection of the transmission lines on the land. E

[35] The Court of Appeal formed the view that in the instant case, the minutes of the state executive council dated 8 August 1990 referred to by the learned JC served the purpose of showing the state authority's approval of the construction of the transmission lines. F

[36] Having found no appealable error on the part of the learned JC, the Court of Appeal dismissed the appellant's appeal with costs.

THE INSTANT APPEAL G

[37] On 17 May 2016, the appellant obtained leave to appeal against the decision of the Court of Appeal on the following question of law:

> Whether the approval of the state authority under the provision of s 12 of the Electricity Supply Act 1990 must be express and not merely implied? H

[38] It was submitted for the appellant that in considering whether the approval under s 12 of the 1990 Act must be express and not merely implied, the words 'subject to the approval of the State Authority' must be read together with the way which governs the act of the state authority, which is the state executive council ('the State Exco'). I

[39] The State Exco, according to learned counsel, can only act by resolution

A and by properly convened meeting and consideration of papers for approval. In this case, it was in evidence that no written approval was given, and without a written approval, it was argued that there was no approval within the meaning of the statute.

B **[40]** Learned counsel contended that the *kertas kerja* referred to by the learned JC had nothing to do with the construction of the transmission lines and that as a matter of public policy, it is dangerous for the state authority to give approval by conduct because it would enable a person to assert licence or occupation of state land through implied approval.

C

[41] Learned counsel for the appellant had also argued that the position taken by the appellant that approval means express or written approval does not amount to rewriting the statute as their contention is simply that the word 'approval' must be read as 'express approval'.

D

[42] It was further submitted for the appellant that the High Court was wrong in law when the learned JC failed to take into account the effect of the State Constitution in construing s 12 of the 1990 Act and that the Court of E Appeal was similarly wrong when they agreed with the learned JC. The correct question to ask, according to learned counsel, was in what manner the 'approval of the State Authority' could be effected and proved in the context of the State Constitution and not whether the word 'approval' could be in writing or by way of an implication, by looking solely at the statute. In asking the F wrong question, it was argued that the Court of Appeal and the learned JC had fundamentally misdirected themselves that one may safely say that no reasonable court which had properly directed itself and asked the correct questions could have arrived at the same conclusion.

G **[43]** For the respondent, it was argued that while there was no approval in the sense of it being contained in one document such as an extract of minutes of the State Exco meeting, there was approval for purposes of s 12 of the 1990 Act, as can be gathered from several documents and conduct of the parties. In this regard, learned counsel highlighted the history of the land as follows.

H

[44] When the respondent entered the land in 1992, it was state land. At no time did the state object to the respondent's entry and construction of the transmission lines. When the land was alienated to the first proprietor, Metro Angkasa in 1990, the state authority recognised the fact that there was going to I be transmission lines on the land as evident from the minutes of the State Exco meeting dated 8 August 1990. In 1991, pursuant to the State Exco meeting dated 14 August 1991, the land alienated to Metro Angkasa was carved out. An area of 2.2356 hectares was alienated to the respondent for purposes of the construction of the respondent's substation. The document of title was issued

on 25 August 1992. The respondent entered the land and constructed the transmission lines.

[45] The respondent had also relied on the evidence of the Deputy Registrar of Land and Mines Negeri Sembilan, Khairil Anuar bin Karim (DW1), who testified mainly on the documents available, and on the evidence led by the respondent's General Manager, Hashim bin Ismail (DW2) on the process for the construction of the transmission lines.

OUR DECISION

[46] It is not in dispute in this case that when the respondent entered the land in 1992 to construct the transmission lines, the land belonged to the state. At the outset we agree with the High Court and the Court of Appeal that the relevant law applicable to the dispute would be s 12 of the 1990 Act. The only issue in this appeal is whether the respondent obtained the state authority's approval prior to entry on the state land to construct the transmission lines.

[47] The 1990 Act is silent on how the approval of the state authority was to be proven. In the instant case, the state authority is that of Negeri Sembilan where s 3 of Part 1 of the Interpretation Acts 1948 and 1967 states:

> 'State Authority' means the Ruler or Yang di-Pertua Negeri of a State and includes, in Negeri Sembilan, the Yang di-Pertuan Besar acting on behalf of himself and the Ruling Chiefs:

[48] In arguing that the learned JC erred in holding that the words 'approval of the State Authority' under s 12 of the 1990 Act did not require a written approval and that it could be implied, learned counsel for the appellant relied on the following articles of the State Constitution of Negeri Sembilan:

> XXXV(1) The executive authority of the State shall be vested in the Ruler and exercisable, unless otherwise provided by the Federal Constitution or this Constitution, by His Highness or by the State Executive Council ...
>
> ...
>
> XL(1) In the exercise of His functions under the Constitution of the State or any law or as a member of the Conference of Rulers the Ruler shall act in accordance with the advice of the Executive Council ...
>
> XLIV(1) Minutes shall be kept of all proceedings of the State Executive Council.

[49] The appellant essentially took the position that in the absence of any paper and/or minutes of the State Exco meeting authorising the respondent to construct the transmission lines on the land, there was no approval by the state authority under s 12 of the 1990 Act.

[50] Before we consider the evidence to determine whether approval was in fact granted, implied or otherwise, by the state authority for the respondent to construct the transmission lines on the state land in 1992, it is prudent to first deal with the principles of interpretation.

[51] It is trite that in interpreting a statute, words are to be construed in their plain and ordinary meaning.

[52] In *Datuk Seri Ahmad Said Hamdan, Ketua Suruhanjaya, Suruhanjaya Pencegah Rasuah Malaysia & Ors v Tan Boon Wah* [2010] 3 MLJ 193, the issue before the Court of Appeal concerned the construction of s 30(3) and 30(1)(a) of the Malaysian Anti-Corruption Commission Act 2009 ('the MACC Act'). Section 30(1)(a) which is of particular relevance to this appeal reads:

> 30(1) An officer of the Commission investigating an offence under this Act may —
>
> (a) order any person to attend before him for the purpose of being examined orally in relation to any matter which may, in his opinion, assist in the investigation into the offence;

[53] In respect of the word 'order' appearing in the above quoted section, the Court of Appeal said:

> [20] ... we are of the view that 'order' under s 30(1)(a) need not be in writing. There is no requirement under that section or anywhere in the MACC Act that the order thereunder must be in writing. Similarly, there is no requirement that 'order' under ss 30(1)(b) and 30(1)(d) must be in writing. We find support for our view from the language used in s 30(1)(c) of the MACC Act which specifically provides 'written notice' as the mode of ordering any person to furnish a statement on oath or affirmation setting out therein all such information which in the MACC officer's opinion would be of assistance in his investigation. No such mode is required under s 30(1)(a), (b) and (d) of the MACC Act. If the Legislature had intended that the order under s 30(1)(a), (b) and (d) as the case may be to be in writing, it could have easily used the words 'by written notice' before the word 'order' under those provisions. In our view, the omission of the words 'by written notice' or any word to the like effect from those provisions is deliberate. Thus, the order under s 30(1)(a) may be a verbal order.

[54] In *New Plymouth Borough Council v Taranaki Electric Power Board* [1933] AC 680, the question before the House of Lords was in relation to the meaning of the word 'adjoining' as employed in s 282 of the Municipal Corporation Act 1920, of New Zealand. That section reads as follows:

> A Council, having established electric-light works for the purpose of lighting the streets and public places of the borough may (a) supply electricity to any person residing beyond the borough, with the consent of the local authority of the district in which the supply is given, and the provisions of this Act as to the supply of electricity to the inhabitants of the borough shall, so far as applicable, extend and

apply to the case of such supply beyond the borough, and (b) contract with the local authority of any adjoining district to supply electricity to such local authority upon such terms and conditions as may be mutually agreed upon.

[55] The question for determination was whether the boroughs of Inglewood and Waitara (a distance of eight miles and six miles respectively, from the borough of New Plymouth) are 'adjoining districts' to the borough of New Plymouth. In the first instance, Mcgregor J answered the question in the affirmative. The Court of Appeal unanimously came to a contrary decision. The matter then went to the House of Lords. In affirming the decision of the Court of Appeal, Lord McMillan said at p 682:

> Their Lordships agree with the learned judges of the Court of Appeal that the primary and exact meaning of 'adjoining' is 'conterminous'. At the same time it cannot be disputed that the word is also used in a looser sense as meaning 'near' or 'neighbouring'. But, as Lord Hewart CJ said in a recent case, where the question was as to the meaning of the word 'contiguous': 'It ought to be the rule, and we are glad to think that it is the rule, that words are used in an Act of Parliament correctly and exactly, and not loosely and inexactly. Upon those who assert that that rule has been broken the burden of establishing their proposition lies heavily. And they can discharge it only by pointing to something in the context which goes to show that the loose and inexact meaning must be preferred: ...
>
> The context in the present case does not help the appellants ... Indeed, it is rather against them, for in para (a) of s 282 reference is made to 'any person residing beyond the borough' while in para (b) the reference is to the local authority, not of any district beyond the borough, but of 'any adjoining district'. The contrast is significant.

[56] In *Fletcher and Others v Minister of Town and Country Planning* [1947] 2 All ER 496, the matter concerned an appeal under the New Towns Act 1946. In applying to quash the order made by the Minister of Town and Country Planning, the ground advanced by the appellant was that there was no consultation between the Minister and the authorities concerned, in accordance with the Act. The central issue before the court was whether there was a proper consultation. In dismissing the appeal, Morris J said at p 500:

> The word 'consultation' is one that is in general use and that is well understood. No useful purpose would, in my view, be served by formulating words of definition. Nor would it be appropriate to seek to lay down the manner in which consultation must take place. The Act does not prescribe any particular form of consultation. If a complaint is made of failure to consult, it will be for the court to examine the facts and circumstances of the particular case and to decide whether consultation was, in fact, held.

[57] Coming back to the instant case, the words used in s 12 are clear and they mean what they say, ie that there has to be an approval by the state

authority for the respondent to construct the transmission lines on the state land. The word 'approval' is in general use and is well understood. There is absent the words 'approval in writing'. Applying the first and most elementary rule of construction, it is to be assumed that the words and phrases are used in their ordinary meaning. Parliament had deemed it fit not to provide for the words 'approval in writing'. The intention of Parliament in our view is made clearer if we were to contrast s 12 with other provisions in the 1990 Act, namely ss 11(4), 14(2)(a) and 37(13)(a) which specifically stipulate for certain acts to be done in writing.

[58] It is trite that the duty of the court is limited to interpreting the words used by the Legislature and it has no power to fill the gaps disclosed. To do so would be to usurp the function of the Legislature (see *Affin Credit (Malaysia) Sdn Bhd v Yap Yuen Fui* [1984] 1 MLJ 169 which referred to *Magor and St Mellons Rural District Council v Newport Corporation* [1951] 2 All ER 839; [1952] AC 189). We are therefore of the view that it is not for the court to fill the gap by inserting or adding the word 'in writing' to the word 'approval of the State Authority' in s 12. We therefore agree with the courts below that the words 'approval of the State Authority' cannot be read to mean 'approval of the State Authority in writing'. It is not up to the court to rewrite the statute to add the words 'in writing' to the words 'approval' in s 12.

[59] Giving the word 'approval' its plain and ordinary meaning, we hold the view that the approval as envisaged in s 12 can be in the form of an implied approval or express approval: implied as can be gathered from the facts and circumstances, or express as in writing. The concern raised by the appellant that as a matter of public policy, it is dangerous for the state authority to give implied approval or approval by conduct, in our view, does not arise as the court will be required to consider the issue of approval in each case based on its own facts and evidence.

[60] The appellant referred to the decision of this court in *Tenaga Nasional Bhd v Majlis Daerah Hulu Terengganu* [2014] 6 MLJ 800 ('TNB v MDHT'), where learned counsel submitted that the case was helpful in considering how an approval or a decision of a state authority could be effected and proved. In *TNB v MDHT*, the issue concerned the meaning of the phrase 'as the state authority may determine' in s 137(3) of the Local Government Act 1976 ('the LGA 1976'). The High Court allowed the appellant's application for judicial review, but the decision was reversed on appeal. In allowing the appeal, the Court of Appeal drew inferences from a letter dated 15 June 2005 where the respondent informed the appellant that a 1999 valuation list was extended pursuant to s 137(3) of the LGA 1976. The Court of Appeal held that the 1999 valuation list would be sufficient proof of the decision of the state authority. On appeal to this court, the principal issues to be decided were: (i) whether there

was a new valuation list prepared by the respondent as the local authority for the purpose of the issuance of the notice of assessment dated 6 February 2005 for the year 2005 assessment; and (ii) whether the respondent had in fact adopted the 1999 valuation list for the year 2005 assessment and have succeeded in furnishing evidence of any extension order as determined by the state authority of the said 1999 valuation. In allowing the appeal, this court said:

> [12] It is noted the requirements set out under s 137(3) of the Act is that a new valuation list shall be prepared and completed once every five years or within such extended time period as the state authority may determine. Section 137 of the Act contains provisions relating to the valuation list as follows:
>
> > 137(1) The local authority shall cause a valuation list of all holdings not exempted from the payment of rates to prepared containing:
> >
> > (a) the name of the street or locality in which such holding is situated;
> >
> > (b) the designation of the holding either by name or number sufficient to identify it;
> >
> > (c) the names of the owner and occupier, if known;
> >
> > (d) and the annual value or improved value of the holding.
> >
> > (2) The valuation list together with the amendments made under section 144 shall remain in force until it is superseded by a new valuation list.
> >
> > (3) A new valuation list which shall contain the same particulars as in subsection (1) shall be prepared and completed every five years or within such extended period as the State Authority may determine.
>
> [13] Giving the words in s 137 of the Act its plain and ordinary meaning it is clear that before the expiry of the five year period the local authority shall prepare either a new valuation list or take steps for the existing list to be extended by the state authority. Following the 1999 valuation list it would appear that a new valuation list should have been prepared by the respondent latest by the year 2004. For the respondent to rely on the 1999 valuation list there should have been evidence of an extension by the state authority for the extended use of the 1999 valuation list.
>
> [14] We are of the view the respondent has failed to produce credible supporting evidence to support its contention that the 1999 valuation list has been adopted by way of an extension order by the state authority. We find that the Court of Appeal erred in holding that the respondent's letter dated 15 June 2005 to the appellant can be accepted as evidence that the 1999 valuation list had been extended by the state authority. We are of the view that the respondent's letter dated 15 June 2005 was only a reply by the Yang Di Pertua, Majlis Daerah Hulu Terengganu to the appellant in response to the objection made by the appellant to the respondent with regard to the annual value of the subject property and the notice of assessment issued. The respondent has failed to furnish any credible evidence such as the extract copy of the decision of the Majlis Mesyuarat Kerajaan Negeri Terengganu ('the state authority')

A and its *gazette* notification to support its contention that the 1999 valuation list had been extended by the state authority.

[61] The case of *TNB v MDHT*, in our view, does not assist the appellant. In coming to the decision that it did, this court applied the basic principle of interpretation of statute that the words used in a section must be given their plain grammatical meaning. It is also pertinent to note that in *TNB v MDHT*, the court found that there was no credible evidence to support the respondent's contention that the 1999 valuation list has been adopted by way of an extension order by the state authority. All that the respondent had, was a letter from its Yang Di-Pertua.

[62] The situation in the present case is different. Here, there are documents in the form of minutes of the State Exco meeting to indicate that the state authority had knowledge of the construction of the transmission lines on the state land by the respondent, and that the state authority had not objected to the same. In this regard, it was the submission of learned counsel for the appellant that the documents had nothing to do with the transmission lines. With respect, we disagree.

[63] It was the evidence of DW1 that:

> ... Petikan Peringataan Majlis Mesyuarat Kerajaan bertarikh 8 Ogos 1989 ... telah meluluskan pemberimilikan tanah tersebut kepada Metro Angkasa dengan pengindorsan mengenai bekalan elektrik yang merujuk secara spesifik bahawa pejabat Tanah Daerah Kecil Gemas telah meluluskan pencawang elektrik Defendan.

[64] DW1 had also testified that it is not the policy of the state to acquire land for the construction of transmission lines and that acquisition is only for the construction of substations. The witness stated that from the contemporaneous document, the respondent had the approval of the state authority for the construction of the transmission line. The relevant part of his evidence is reproduced below for ease of reference:

> S23: Adakah kebenaran tersebut telah diberikan secara bertulis?
>
> J23: Mengikut rekod yang ada pada saya, tiada sebarang kebenaran bertulis tetapi segala dokumen-dokumen kontemporari menunjukkan bahawa kemasukan Defendan di tanah tersebut adalah berdasarkan kebenaran Pihak Berkuasa Negeri.
>
> Selain itu, di bawah seksyen 52 Akta Letrik 1949, Pejabat Tanah dan Galian Negeri Sembilan tidak perlu mengisukan sebarang notis statutori bagi kebenaran membina talian pencawang kepada Defendan.
>
> PBN tidak pernah membantah kemasukan Defendan di tanah tersebut.

[65] As for DW2, he stated that by way of a letter dated 28 December 1989, LLN had applied to the state for approval to construct the transmission lines on the land. In its application, the respondent had enclosed the relevant plan for the construction. The state authority did not object to the application and the respondent proceeded with the construction of the transmission lines in accordance with the plan submitted.

[66] On the minutes dated 8 August 1990, DW2 said:

> J32. Ia menunjukkan pengetahuan dan kebenaran kerajaan negeri yang merupakan pemilik hartanah tersebut pada masa tersebut yang telah memberikan kebenaran kepada kami untuk mendirikan pencawang tersebut selaras dengan hasrat kerajaan Negeri untuk membangunkan kawasan tersebut kepada kawasan industry perusahaan bukan sahaja dengan bekalan elektrik tetapi juga dengan bekalan air, bekalan telefon, jalan masuk dan sebagainya. Seterusnya ia juga menunjukkan yang Pemilik terdahulu iaitu Metro Angkasa telah diberi milik hartanah tersebut subjek atau tertakluk kepada kehadiran kami di hartanah tersebut.

[67] On the procedure to construct the transmission lines, DW2 gave the following evidence:

> S33. Apakah prosedur bagi TNB untuk mendirikan talian tersebut?
>
> J33. Memandangkan pada masa itu tanah subjek masih tanah kerajaan maka tiada apa-apa 'Notis Kemasukan' statutori yang perlu dikeluarkan oleh Defendan. Pihak kami telah membuat permohonan untuk mendirikan talian tersebut melalui surat kami yang bertarikh 26-12-1989 ... Surat tersebut dimajukan bersama segala pelan-pelan dan dokumen-dokumen yang relevan dan selarasnya dihantar kepada kesemua jabatan terlibat/pihak berkepentingan di atas tanah tersebut.
>
> S34. Selepas itu, apa yang telah berlaku?
>
> J34. Pihak kami tidak menerima sebarang bantahan dari pihak kerajaan Negeri maka dengan itu kami telah memulakan kerja-kerja pembinaan tersebut.
>
> S35. Adakah kebenaran pihak berkuasa Negeri tersebut akan diberikan melalui sebarang surat pemberitahuan atau secara bertulis?
>
> J35. ... Secara amalan, tiada sebarang surat yang akan diberikan kepada kami kerana LLN dimiliki kerajaan pada masa tersebut dan tanah juga kepunyaan kerajaan. Ia adalah berbeza dengan tanah kepunyaan individu perseorangan atau tanah swasta di mana kemasukan akan dibuat melalui Notis Statutori ...

[68] As a matter of fact, on 14 August 1991, the state authority had approved the alienation of land to the respondent for the construction of a substation and an individual title was issued in respect of the land concerned. The extract of the minutes reads:

> Majlis Mesyuarat Kerajaan telah menimbangkan Kertas Mesyuarat No 1306/91 dan mengambil keputusan bersetuju meluluskan pemberimilikan tanah Kerajaan seluas lebih kurang 2.2.356 hektar di Mukim Gemas, Daerah Tampin seperti bertanda merah dalam pelan ... kepada Tenaga Nasional Berhad untuk tapak pencawang elektrik, ...

[69] The appellant contended that had there been an approval for the transmission lines, surely there must have been another individual title in respect of the affected area. In this regard, we need only refer to the evidence of DW1 on why the land was carved out for the substation but not for the transmission lines. According to DW1, a title will be issued for a substation, whereas there was no need for the issuance of a title for the transmission line because a substation is a permanent utility. DW1 further stated that the transmission lines will be reflected in the final title, but as it stands now, the land is under a qualified title, hence there was no endorsement of the existence of the transmission lines on the document of title of the land. The evidence of DW1 remained intact.

CONCLUSION

[70] We are not persuaded that the courts below were plainly wrong in their decision and we find no reason to differ from the interpretation placed by the courts below on the word 'approval' in s 12 of the 1990 Act. Even if we were to read the phrase 'approval of the State Authority' in conjunction with art XLIV(1) of the State Constitution which requires that 'minutes shall be kept of all the proceedings of the State Executive Council', we find that the approval for the respondent to build a substation has been reflected in the minutes dated 14 August 1991. The appellant did not deny the fact that the substation would serve no purpose without the transmission lines. The approval for the substation is thus approval for the transmission lines.

[71] On the facts and circumstances of this case, we hold that the respondent had proved that they had the approval of the state authority to construct the transmission lines on the land. Having such an approval, the cause of action for continuing trespass cannot lie against the respondent. The appellant's claim was thus rightly dismissed by the High Court, and rightly upheld by the Court of Appeal. What we have stated thus far is sufficient to dispose the appeal. We therefore find no necessity to answer the specific question posed. In the circumstances, the appeal is dismissed with costs.

[72] This judgment is prepared pursuant to s 78(1) of the Courts of Judicature Act 1964, as Justice Balia Yusof bin Hj Wahi had since retired.

Appeal dismissed.

Reported by Ashok Kumar